APPENDIX.

PERTINENT STATUTORY PROVISIONS.

California Statutes of 1891, page 262 (Chapter 181) provide as follows:

> "Section 1. The state of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein."

California Statutes of 1919, page 74 (Chapter 51), approved April 15, 1919, provide as follows:

> "Section 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Yosemite national park,' 'Sequoia national park,' and 'General Grant national park,' respectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and

saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided, however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks."

41 Stats. 731, approved June 20, 1920 (16 U. S. C. 57), provided:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks

are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California."

Section 1 of 54 Stats. 41, approved March 4, 1940 (16 U. S. C. 80) provides among other things as follows:

"The tract of land in the State of California, particularly described as follows, to wit: * * * [The description is deleted here since the land involved is not within said description]; * * * is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States and dedicated and set apart as a public park, to be known as the Kings Canyon National Park, for the benefit and enjoyment of the people: *Provided,* That nothing in sections 80-80d of this title shall be construed to affect or abridge any right acquired by any citizen of the United States in the above-described area: *And provided further,* That no grazing permits heretofore issued and in effect on January 15, 1939, affecting the area described in this section, for whose renewal an application is made before the date of expiration, shall be affected by sections 80-80d of this title, except that they shall be subject to such terms and conditions to insure protection of the lands and for other purposes as may be prescribed by the Secretary of the Interior."

54 Stats. 43, approved March 4, 1940, being Section 2 of the act quoted immediately above (16 U. S. C. 80a), provides as follows:

> "The General Grant National Park is hereby abolished, and the west half of section 33, township 13 south, range 28 east, and west half of section 4, all of section 8 and the northwest quarter of section 9, township 14 south, range 28 east, Mount Diablo meridian, California, together with the lands formerly within the General Grant National Park, California, and particularly described as follows, to wit: All of sections 31 and 32, township 13 south, range 28 east, and sections 5 and 6, township 14 south, range 28 east, of the same meridian, are, subject to valid existing rights, hereby added to and made a part of the Kings Canyon National Park and such lands shall be known as the General Grant grove section of the said park. The General Grant grove section of the Kings Canyon National Park may, by proclamation of the President, be extended to include the following described lands, to wit: Section 9, south half, section 10, southwest quarter, and that part of the east half south of Generals Highway; section 11, that part south of Generals Highway; section 13, that part south of Generals Highway; section 14, that part south of Generals Highway, section 15, east half, northwest quarter, and the southeast quarter of the southwest quarter, section 21, southeast quarter of the northeast quarter, and the east half of the southeast quarter; section 22, east half, east half of the northwest quarter, southwest quarter of the northwest quarter and southwest quarter; section 23; section 24, that part south of Gen-

erals Highway; sections 25 and 26; section 27, east half, northwest quarter, and that part of the southwest quarter north and east of the crest of Redwood Mountain; section 34, that part east of the crest of Redwood Mountain; sections 35 and 36, township 14 south, range 28 east; all of sections 1 and 2; section 3, that part east of the crest of Redwood Mountain; section 11, that part east and north of the crest of Redwood Mountain; all of section 12; section 13, that part north of the Sequoia National Park boundary, township 15 south, range 28 east, Mount Diablo meridian, which shall be subject to all laws, rules, and regulations applicable to the said park. Such extension of the General Grant grove section of the said park shall not interfere with the movement of stock and vehicular traffic without charge, under general regulations to be prescribed by the Secretary of the Interior, to and from national forest lands on either side of the said park extension. The Kings Canyon National Park shall receive and use all moneys heretofore or hereafter appropriated for General Grant National Park."

Section 119 of the Government Code of California (added by Statutes of 1943, Chapter 96), provides as follows:

"Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Kings Canyon National Park'; saving however to the State of Cali-

fornia the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park, and the right to fix and collect license fees for fishing in said park; and saving also to the persons residing in said park now or hereafter the right to vote at all elections held within the county or counties in which said park is situate. The jurisdiction granted by this section shall not vest until the United States through the proper officer notifies the State of California that it assumes police jurisdiction over said park."

Section 120 of the Government Code of California (added by Statutes of 1943, Chapter 536), provides as follows:

"Upon receipt of notification of the acceptance by the United States of exclusive jurisdiction over lands situated within the State of California, the Governor shall cause to be filed a true and correct copy of said notification in the office of the recorder of the county in which said lands are located and in the office of the clerk of the board of supervisors of the county in which said lands are located."

54 Stats. 1083, approved October 9, 1940 (40 U. S. C. 255), provides among other things, as follows:

"No public money shall be expended upon any site or land purchased by the United States for the pur-

poses of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title."

* * * * * * * *

[The second to seventh paragraphs inclusive are omitted as not applicable.]

* * * * * * * *

"Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

Title 18, U. S. C. Section 7, subdivision (3), provides as follows:

> "The term 'special maritime and territorial jurisdiction of the United States,' as used in this title, includes:
>
> '(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.'"

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 341

STATE OF CALIFORNIA AND HARRY THEODORE PETERSEN, IDA PETERSEN, CLAYTON LEON DAIGLE AND AZILE CAROL DAIGLE, INDIVIDUALLY AND AS A CO-PARTNERSHIP DOING BUSINESS AS "THE LODGE," PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 46-53) is reported in 91 F. Supp. 209. The opinion of the Court of Appeals (R. 90-96) is reported in 191 F. 2d 154.

JURISDICTION

The judgment of the Court of Appeals was entered August 2, 1951 (R. 97). The petition for

a writ of certiorari was filed September 20, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254(1).

QUESTION PRESENTED

Whether the cession to the United States by the State of California of exclusive jurisdiction over the Kings Canyon National Park included privately owned parcels of land within the park.

STATUTES INVOLVED

The relevant portions of the Act of March 4, 1940, 54 Stat. 41, 16 U.S.C. sec. 80a, establishing Kings Canyon National Park and of the California Act, approved April 7, 1943, Government Code section 119, ceding exclusive jurisdiction to the United States are set out in the record at pages 30-32. The Act of October 9, 1940, 54 Stat. 1083, 40 U.S.C. sec. 255, provides, in part, as follows:

> Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over

any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.

STATEMENT

This suit was instituted by the United States against Harry Petersen and other persons (hereafter referred to as "the Petersens"), doing business as "The Lodge," seeking an injunction against sale of liquor at The Lodge without appropriate Federal permit and a declaratory judgment that land particularly described is subject to exclusive jurisdiction of the United States (R. 2-10). Pursuant to stipulation, the State of California was permitted to intervene as a defendant and its answer claimed exclusive jurisdiction was vested in the State (R. 17-25). After hearing the case upon stipulated facts (R. 44-45), the district court granted the declaratory relief sought but denied an injunction on the ground that the criminal remedy was adequate (R. 46-53). The relevant facts may be briefly summarized as follows:

"The Lodge" is located in Wilsonia Village, which is a residential community composed prin-

cipally of summer homes, less than five families living there the year around (R. 26, 37, 39). The village constitutes a tract of some 120 acres within and entirely surrounded by Kings Canyon National Park (R. 27). That park was created by the Act of March 4, 1940, 54 Stat. 41, 16 U.S.C. sec. 80, principally from lands formerly within the General Grant National Park. The park included the section of land in which Wilsonia Village is located.[1] The California legislature, by act approved April 7, 1943, ceded to the United States exclusive jurisdiction "over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Kings CanyonNational Park' ", with reservations as to service of process, voting rights, etc., not material here (R. 31).[2] Notification of acceptance of this cession was given by the Secretary of the Interior in April, 1945 (R. 32).

Subsequently, in November 1947, the Petersens applied to the Department of the Interior for a permit to sell liquor but this was denied in March 1948 (R. 35-36). In April 1948, application was made to the appropriate state authority which in July 1948, over the protest of National Park Serv-

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[1] The village is located in section 5, Twp. 14 S., R. 28 E., while the Act embraces "All of * * * sections 5 and 6, township 14 south, range 28 east * * *." (R. 26, 30.)

[2] Previously, exclusive jurisdiction over General Grant National Park as well as Yosemite and Sequoia National Parks had been ceded to the United States (R. 28-30).

ice, issued seasonal licenses under which The Lodge has been operating (R. 36-37).

Upon these facts, the district court concluded that California intended to cede and the United States intended to accept exclusive police jurisdiction over the privately owned lands in question and that this could constitutionally be done (R. 50-51). The Court of Appeals agreed with both of these conclusions and affirmed the judgment (R. 90-96).

ARGUMENT

1. There can be no question that the lands here involved were expressly included within the boundaries of Kings Canyon National Park as established by the Act of March 4, 1940. The existence of private property rights was expressly recognized by providing that the specified sections of land "are, subject to valid existing rights, hereby added to and made a part of the Kings Canyon National Park." Petitioners' argument (p. 12) that only a portion of section 5 was included in the park is refuted by the plain language of the statute. See note 1, *supra*, p. 4. It is equally clear, as both courts below have held, that California intended to cede and the Secretary of the Interior intended to accept exclusive jurisdiction over all of the territory included within that national park.

2. Petitioners do not here urge that any constitutional obstacle prevents the cession of exclusive jurisdiction over all of the park, including the lots therein to which private persons may hold fee

title or some lesser interest. In *Collins* v. *Yosemite Park Co.*, 304 U.S. 518, this Court pointed out (p. 529) that Clause 17, sec. 8 of Article I of the Constitution is not the sole authority for the acquisition of jurisdiction and (p. 530) that "As the National Government may, 'by virtue of its sovereignty' acquire lands within the borders of states by eminent domain and without their consent, the respective sovereignties should be in a position to adjust their jurisdictions. There is no constitutional objection to such an adjustment of rights." The desirability of adjustment of jurisdiction of the two sovereigns upon a practical basis, following the established boundaries of the national park, is obvious.

Petitioners argue, however, that federal statutes prohibit any such sensible solution and require that jurisdiction be divided according to the property interests existing in individual parcels within the park boundaries. As is usually the case, almost all of the land embraced in the Kings Canyon National Park is owned by the United States.[3] The reasonable application of the Act of October 9, 1940, 54 Stat. 1083, 40 U.S.C. sec. 255, authorizing the acceptance of jurisdiction, to the situation here presented is to read it in terms of the entire area included in the particular project in-

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[3] The court below pointed out (R. 94) that while there are many privately-owned tracts of land in National Parks in the western states, they comprise less than 1% of the area of the Parks.

volved—*i.e.,* the National Park. The California statute uses the language "in said park" or "outside of said park" many times (R. 31-32) and the letter of the Secretary of the Interior assumes police jurisdiction "over the said park" (R. 32). Petitioners' construction, which views "lands" in terms of each individual lot or parcel rather than the total area involved, would produce the absurd result of a checker-board jurisdiction which would shift with each conveyance of an individual lot. In *Adams* v. *United States,* 319 U.S. 312, this Court, speaking of the 1940 Act, said (p. 314): "The Act created a definite method of acceptance of jurisdiction so that all persons could know whether the government had obtained 'no jurisdiction at all, or partial jurisdiction, or exclusive jurisdiction'." Yet petitioners' construction would compel resort to the land title records to determine the question of jurisdiction at any particular time.[4]

Neither the *Adams* case, with which petitioners claim there is a conflict (Pet. p. 13), nor any of the other cases cited by them (Pet. pp. 14-16), supports their attempt to treat each lot or acre in the park individually. On the contrary, in the *Collins* case, *supra,* this Court referred (304 U.S. at p. 528) to the agreement "as to the future jurisdic-

[4] This case does not present any question of criminal jurisdiction. However, petitioners' construction (pp. 12-13) of 18 U.S.C. sec. 7 would seem to be subject to the same objection of attempting to subdivide "land reserved or acquired" into individual lots.

tion and rights of each in the entire area of Yosemite National Park." Compare *United States* v. *Unzeuta,* 281 U.S. 138, sustaining federal jurisdiction over a railroad right of way through a military reservation.

Finally, as the court below pointed out (R. 95-96), the sale of liquor within the boundaries of the Park would tend to thwart its beneficial purposes, unless federally regulated in the interest of the public (cf. Pet. 18).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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NOVEMBER 1951.

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